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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Suggested Consequences for Failure to Implement Commitments on Accountability and Transitional Justice in Human Rights Council Resolution 30/1••

In May 2009 the civil war in Sri Lanka ended with a terrible price having been paid by all the island's inhabitants. We believe that the violations of human rights during that war, particularly its latter stages and those directed against the Tamil population, amount to war crimes and crimes against humanity and constitute the first mass atrocity of the 21rst century.

We aver that Sri Lanka itself must deal with the aftermath of the war, but that it is only with international pressure and assistance that this will be possible. That pressure cannot end without substantial progress being made or the circumstances that led to war will remain and Sri Lanka will continue to hold the faultlines of instability.

The UN Human Rights Council (HRC) must remain actively engaged in the process because commitments made through the HRC process have to be substantially met or other human rights abusers will take note.

The war in Sri Lanka did not end with a negotiated settlement, but with a military victory by the Government assisted by many states which believed the Government's assurances that reconciliation with the Tamil community would be accomplished, made in a joint statement with Secretary-General Ban Ki-moon during his visit in May 2009:

> President Rajapaksa and the Secretary-General agreed that addressing the aspirations and grievances of all communities and working towards **a lasting political solution** was fundamental to ensuring long-term socio-economic development. The Secretary-General welcomed the assurance of the President of Sri Lanka contained in his statement to Parliament… that a national solution **acceptable to all sections of people will be evolved**…
>
> Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights… The Secretary-General underlined the importance of **an accountability process for addressing violations of international humanitarian and human rights law**.1

The 2015 Report of the OHCHR's Investigation on Sri Lanka (OISL Report) reported that, "The sheer number of allegations, their gravity, recurrence and the similarities in their *modus operandi*, as well as the consistent pattern of conduct they indicate, all point towards system crimes."2

In addition, the Report noted:

> While it has not always been possible to establish the identity of those responsible for these serious alleged violations, these findings demonstrate that there are reasonable grounds to believe that **gross violations of international human rights law, serious violations of international humanitarian law and international crimes** were committed by all parties during the period under investigation. Indeed, if established before a court of law, **many of these allegations would amount, depending on the circumstances, to war crimes and/or crimes against humanity. In many of these cases, these acts were apparently committed on discriminatory grounds.**
>
> These allegations should all be promptly, thoroughly and independently investigated, and **those responsible, directly or as commanders or superiors, brought to justice…** These findings also highlight the deeply rooted institutional structures and cultures involved and the **need for profound institutional change to address them in order to guarantee their non-recurrence.**3…
>
> In its report to the United Nations Secretary General in March 2011, the Panel of Experts concluded that "the Government's efforts, nearly two years after the end of the conflict "fall dramatically short of international standards on accountability and fail to satisfy Sri Lanka's

1 https://www.un.org/press/en/2009/sg2151.doc.htm Emphasis NOT in original.
2 Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2) . p.219.
3 ibid.

> legal duties". It also concluded that **the Government had not conducted a genuine investigation, "nor shown signs of any intention to do so", and that its approach to accountability "does not correspond to basic international standards that emphasize truth, justice and reparations for victims"**.4

Tragically, now nearly ten years after the war, the situation has barely changed for the Tamil community. As a result of the OISL Report and the international persuasion it engendered, in 2015's unanimous Resolution 30/1 Sri Lanka committed to a transitional justice and accountability process that it reaffirmed with 2017's Resolution 34/1.

The Government's 25 key commitments in Resolution 30/1 covered a comprehensive range of transitional justice processes and mechanisms, including the meaningful consultation of victims and other stakeholders in planning and implementing all mechanisms5 and the establishment of 'judicial and non-judicial measures.'6 Such measures include 'inter alia, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide victims with remedies, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law with a view to preventing the recurrence of violations and abuses.'7

Sri Lanka agreed to undertake security sector reform and legal reform, including constitutional reform to achieve a devolved political settlement, criminalization of atrocity crimes and enforced disappearances, and repeal of the Prevention of Terrorism Act (PTA).

On accountability, the Government agreed to 'establish a Judicial Mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; …and further affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the Special Counsel's office, of Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators.'8

In this September 2018 HRC session the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presents the report of a July 2017 visit to Sri Lanka that notes:

> Yet, after a two-year extension granted to the Government in resolution 34/1, progress in achieving the key goals seems to have ground to a virtual halt. **None of the measures so far adopted to fulfill Sri Lanka's transitional justice commitments are adequate to ensure real progress.**
>
> **60.** The counter-terrorism apparatus is still tainted by the serious pattern of human rights violations that were systematically perpetrated under its authority. At the time of writing, the PTA remained on the statute book…The Tamil community remains stigmatized and disenfranchised, while the trust of other minority communities is being steadily eroded.
>
> **61.** Sri Lanka must urgently implement the commitments made in resolution 30/1 to address the legacy of widespread and serious human rights violations that occurred in the context of the internal armed conflict in the country. **The pervasive climate of impunity and the lack of accountability for serious human rights violations that occurred both during the conflict and in the aftermath requires immediate redress.**
>
> A failure address these issues promptly and effectively will provide fertile ground for those intent on resorting to political violence…9

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4 Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011 from Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2) , p.261. Emphasis NOT in original.

5 https://www.ohchr.org/EN/hrbodies/hrc/regularsessions/session30/pages/resdecstat.aspx . Preambular Paragraph #15. Emphasis NOT in original.

6 ibid.

7 ibid.

8 https://www.ohchr.org/EN/hrbodies/hrc/regularsessions/session30/pages/resdecstat.aspx . Operative Paragraph #16. Emphasis NOT in original.

9 https://www.ohchr.org/EN/Issues/Terrorism/Pages/Visits.aspx p.16

This session the Special Rapporteur on Transitional Justice will also give his report on Sri Lanka's progress – or lack thereof.

This session provides an opportunity for member states to make crystal clear that swift progress on Sri Lanka's commitments is required. We request that members of the HRC require that Sri Lanka provide a concrete plan with a timetable with clear benchmarks for progress during the September session and that the plan lays out steps to be taken before March 2019 and beyond.

In March 2019 action is required to keep Sri Lanka on the HRC agenda and to continue the HRC's monitoring function. We recommend a new resolution that continues to place Sri Lanka as an issue of concern for the High Commissioner under Item 2, continues to monitor Sri Lanka's progress on accountability and transitional justice, and lays out clear consequences if Sri Lanka fails to act.

By March 2019, if Sri Lanka has not made substantial progress, in addition to continued monitoring by the HRC and your office, the HRC and its member states should consider other consequences such as referring Sri Lanka to the General Assembly and the Security Council for the imposition of economic and military sanctions and either referral to the International Criminal Court or the establishment of a special criminal tribunal on Sri Lanka.

We urge member states to set up an office of the High Commissioner for Human Rights in Sri Lanka, with outposts throughout the country, along with remaining seized with Sri Lanka at the HRC themselves.

We urge member states themselves to deny visas to accused/alleged war criminals and to explore bilateral military and economic restrictions for non-compliance with the two HRC Resolutions. Furthermore, we urge the exercise of universal jurisdiction as recommended by the UN High Commissioner for Human Rights in 2017.

**British Tamils Forum (BTF) and US Tamil Political Action Council (USTPAC), NGOs without consultative status, also share the views expressed in this statement.